

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>
Office: (317) 232-2701
Facsimile: (317) 232-6758

FILED

MAR 09 2004

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42500-S2

IN THE MATTER OF THE INDIANA)
UTILITY REGULATORY)
COMMISSION'S INVESTIGATION OF)
MATTERS RELATED TO THE FEDERAL)
COMMUNICATIONS COMMISSION'S)
REPORT AND ORDER AND ORDER ON)
REMAND AND FURTHER NOTICE OF)
PROPOSED RULEMAKING IN CC)
DOCKET NOS. 01-338, 96-98, AND 98-147)

You are hereby notified that on this date a Presiding Officer makes the following Entry in this Cause:

On March 5, 2004, WorldCom, Inc. d/b/a MCI ("MCI") filed its *Motion for Protection of Certain CLECs' Claimed Confidential and Proprietary Information* ("Motion") with the Indiana Utility Regulatory Commission ("Commission"), seeking confidential treatment of certain portions of the testimony of Gary J. Ball to be filed by MCI in this Cause. MCI seeks this confidential protection pursuant to Indiana Code §§ 8-1-2-29, 5-14-3-4 and 24-2-3-1, and 170 IAC 1-1.1-4. The information for which MCI seeks confidential treatment is information that was submitted to MCI pursuant to a claim of confidentiality by Time Warner Telecommunications of Indiana, L.P. ("Time Warner Telecom") and McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"). Accompanying the Motion were the Affidavits of Pamela H. Sherwood, Time Warner Telecom's Vice President of Regulatory, Midwest Region; and William H. Courter, McLeodUSA's Assistant General Counsel.

The Affidavit of Ms. Sherwood identifies the information that Times Warner Telecom claims as confidential as the following attachments to Gary J. Ball's testimony: Attachment GB 1c, d, e, f, v, and w, Attachment GB 2, and Attachment GB 4. Ms. Sherwood describes this information as being "specific to particular markets in which Time Warner Telecom competes directly with SBC and other competitors." Included in the information are "information concerning the addresses which Time Warner Telecom serves," and "information concerning Time Warner Telecom's transport facilities." The Affidavit asserts that public disclosure of information concerning addresses served by Time Warner Telecom "would allow our competitors to target our existing customer base and direct its marketing activities accordingly," and that public disclosure of transport facilities "would permit competitors to evaluate our company's market share and provide valuable insights into the implementation of our strategic business plans." According to

Ms. Sherwood: "Disclosure of this type of market-specific data would tip off SBC and other competitors to the sectors of the market being targeted by Time Warner Telecom and the types of products and services that Time Warner Telecom is marketing and selling."

The Affidavit of Ms. Sherwood further describes the efforts Time Warner Telecom has taken to maintain confidentiality of the information:

The confidential information. . . . is compiled from data sources that are available only to a select number of departments, which in turn have only a few employees. Those departments designate this information as confidential and treat it according to established Time Warner Telecom policies and procedures regarding confidential and proprietary information. This data is not posted on any public drive that is accessible to all employees. Rather, the compilation of data is made available only to Senior Management of Time Warner Telecom, the management team of Time Warner Telecom of Indiana, and a select number of employees that have a particular need to know this data.

The Affidavit of William H. Courter identifies the testimony of Gary J. Ball and attachments thereto that McLeodUSA claims as confidential as "detailed descriptions of loop and transport facilities of McLeodUSA which are located in Indiana and the locations or 'routes' of those facilities." The Affidavit does not identify specifically where in Mr. Ball's testimony (EG. Page No., Attachment No.) the claimed confidential information is located, but presumably MCI knows its location. The Affidavit also asserts that: "Unrestricted availability of the details of this information would provide competitors with information regarding McLeodUSA's business strategies that would otherwise be unavailable."

Mr. Courter's Affidavit also briefly describes the efforts McLeodUSA has taken to maintain the confidentiality of the information: "Said information is provided to employees of McLeodUSA only on a need-to-know basis and never is provided to McLeodUSA's competitors absent a non-disclosure agreement."

Having reviewed the Motion and its accompanying Affidavits, the Presiding Officer finds that there is a sufficient basis for a preliminary determination of confidentiality with respect to the following attachments to Gary J. Ball's testimony: Attachment GB 1c, d, e, f, v, and w, Attachment GB 2, and Attachment GB 4. The Presiding Officer also finds that there is a sufficient basis for a preliminary determination of confidentiality with respect to those portions of Gary J. Ball's testimony and attachments thereto that contain detailed descriptions of loop and transport facilities of McLeodUSA which are located in Indiana and the locations or "routes" of those facilities. These preliminary determinations are made by application of the trade secret exception to disclosure of public records found at Indiana Code §§ 5-14-3-4(a)(4) and 24-2-3-2, and the Commission's confidentiality procedures found at 170 IAC 1-1.1-4, to the Motion and its accompanying Affidavits.

Accordingly, MCI shall hand deliver to the presiding Administrative Law Judge, in a sealed envelope that is clearly marked "confidential" and with the Cause Number noted thereon, Attachment GB 1c, d, e, f, v, and w, Attachment GB 2, and Attachment GB 4 of Gary J. Ball's testimony, as well as those portions of Gary J. Ball's testimony and attachments thereto that contain detailed descriptions of loop and transport facilities of McLeodUSA which are located in Indiana and the locations or "routes" of those facilities. Said information shall be treated as confidential and exempt from public disclosure in accordance with Indiana Code 5-14-3.

IT IS SO ORDERED.

William A. Divine
William G. Divine, Administrative Law Judge

March 9, 2004
Date

Nancy E. Manley
Nancy E. Manley, Secretary to the Commission